

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

No. 1:10-cv-05760-SAS

**SAMUEL E. WYLY and DONALD R. MILLER,
JR., in his capacity as the Independent Executor of
the Will and Estate of Charles J. Wyly, Jr.,**

Defendants.

DECLARATION OF EUGENE CANJELS, Ph.D.

1. I am employed by the United States Securities and Exchange Commission (“SEC”) as a Supervisory Financial Economist in the Division of Economic and Risk Analysis (“DERA”). I submit this declaration in support of the SEC’s Notice of Recalculations of Pre-Judgment Interest on Ill-Gotten Gains.

2. I was asked to calculate pre-judgment interest (“PJI”) on the amounts the Court found to be ill-gotten gains of Sam and Charles Wyly - \$123,836,958.76¹ for Sam Wyly and \$63,396,733.97² for Charles Wyly.

3. On the basis of my calculations, which are described more fully below, I conclude that PJI on Sam Wyly’s ill-gotten gains is \$74,281,866.04, resulting in total disgorgement (ill-gotten gains plus PJI) of \$198,118,824.80.

4. Additionally, on the basis of my calculations, I conclude that PJI on Charles Wyly’s ill-gotten gains is \$37,841,684.56, resulting in total disgorgement of \$101,238,418.53. The details of my calculations are provided below, and in tables attached to my declaration.

¹ ECF No. 476 at 80.

² ECF No. 481 at 80.

5. I performed my calculations in three steps:
 - a. I calculated the applicable yearly interest rate
 - b. I calculated “PJI multipliers,” which represent the total compounded pre-judgment interest in dollars for each dollar of ill-gotten gains;³ and
 - c. I applied the PJI multipliers to the ill-gotten gains on an annual basis.
6. The Court instructed the SEC to calculate pre-judgment interest “at the lower of the average LIBOR or IRS underpayment rate⁴ for each year.”⁵ My research revealed that the average LIBOR was less than the IRS underpayment rate for each year during the period of the Wylys’ securities fraud. I assumed LIBOR rates for 12 month maturity, and annual compounding.

STEP 1: ANNUAL INTEREST RATES

7. I compared daily, twelve (12) month LIBOR rates posted on the Federal Reserve Economic Data (“FRED”) website, which is maintained by the Federal Reserve Bank of St. Louis,⁶ to IRS Underpayment Rates appended to IRS Revenue Ruling 2014-14. The averages by year for both rates are reflected in Table 1 (attached to my declaration), which shows that the

³ See e.g. J. Colón and M. Knoll, *Prejudgment Interest* in R. Weil, LITIGATION SERVICES HANDBOOK – THE ROLE OF THE FINANCIAL EXPERT (5th ed. 2012).

⁴ The current administrator of LIBOR - Intercontinental Exchange (“ICE”) - describes LIBOR as “designed to reflect the short term funding costs of major banks active in London.” IBA_LIBOR_FAQ available at https://www.theice.com/publicdocs/IBA_LIBOR_FAQ.pdf. The IRS over- and underpayment rates have been based on the Federal short-term rate since The Tax Reform Act of 1986. From January 1987 until December 1998, the IRS over- and underpayment rates were respectively 2% and 3% above the Federal short-term rate. The Internal Revenue Service Restructuring and Reform Act of 1998 eliminated the difference between the over- and underpayment rate for non-corporate taxpayers and set the rates for both to the Federal short-term rate plus 3%.

⁵ ECF Nos. 476 and 481 at 77 and 80.

⁶ Website: <http://research.stlouisfed.org/fred2/>. Series Name: USD12MD156N.

LIBOR rate is always the lower of the two rates and is therefore used in all of my PJI calculations.

STEP 2: PJI MULTIPLIERS

8. Using the yearly average LIBOR rates from Table 1, I calculated total PJI for each dollar of ill-gotten gains, using various start dates: for PJI related to the sale of unregistered securities, I calculated PJI from January 1 of the next calendar year after the profits were realized; and for PJI related to unpaid taxes, I calculated PJI starting May 1 of the next calendar year.⁷ I calculated PJI through November 30, 2014.⁸

9. Before calculating total PJI for each start date, I calculated the actual amount of interest for each annual period or sub-period before compounding. This involved not only calculating interest for partial years, such as 2014 and the periods from May 1 to December 31, but also calculating actual interest for a full calendar year. LIBOR rates are reported on a day count convention of actual over 360,⁹ i.e., the interest rate for each period is calculated as the average yearly LIBOR times the number of days in a period and divided by 360. The relevant period rates are reported in columns (3) through (8) of Table 2, which is attached to my declaration.

10. The last component in determining the appropriate PJI multipliers was to compound period rates annually. For example, to calculate the PJI multiplier for the period from

⁷ The taxes would have been due on April 15 of the next calendar year, but I ignored PJI for partial months.

⁸ I do not calculate interest for the partial month (in this case a single day) from November 30 until December 1, 2014.

⁹ See F. Fabozzi, *FIXED INCOME MATHEMATICS* 81-84 (4th ed. 2006), for an explanation of day count conventions. See ICE, "Libor: Frequently Asked Questions" available at https://www.theice.com/publicdocs/IBA_LIBOR_FAQ.pdf for LIBOR day count convention; see also OpenGamma, *Interest Rate Instruments and Market Conventions Guide*, December 2013.

January 1, 2011, until November 30, 2014, I compounded, using the interest rates 0.84%, 1.03%, 0.69%, and 0.52% (bottom of column (5) in table 2) for the years 2011, 2012, 2013, and 2014, respectively, for a total PJI of \$0.0311 per dollar of ill-gotten gain. The PJI multiplier for the period from May 1, 2011, until November 30, 2014, was derived using the interest rates 0.56%, 1.03%, 0.69%, and 0.52% for the years 2011, 2012, 2013, and 2014, respectively, for a total PJI of \$0.0283 per dollar of ill-gotten gain.¹⁰

STEP 3: APPLYING PJI MULTIPLIERS

11. The final step involved assessing the components of the total ill-gotten gains by year, determining the PJI start date, and applying the appropriate multiplier from columns (10) and (12) from Table 2. The annual amounts of taxes owed were taken from Joint Exhibits JX9904-A and JX9904-B, and the source of total annual profits on the sale of unregistered securities is the Supplemental Report of Ms. Yasmine Misuraca dated June 5, 2014. Consistent with the Court's determination that the "Wyllys should disgorge twenty-five percent of their total profits" on their sales of unregistered securities,¹¹ I applied a rate of twenty-five percent in calculating PJI on the unregistered securities disgorgement amounts. The details of my calculations are reflected in Table 3, which is also attached to my declaration.

12. Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 17, 2014



Eugene Canjels, Ph.D.
Supervisory Financial Economist
Securities and Exchange Commission

¹⁰ The partial rate from May to December was applied for the first year, and full rates with start dates in January were used for subsequent years.

¹¹ ECF Nos. 476 and 481 at 74.

Table 1. Yearly Average LIBOR and IRS Underpayment Rates			
<i>Year</i>	<i>12 Month USD Libor ¹</i>	<i>IRS Underpayment Rate ²</i>	<i>Difference</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i> <i>= (3)-(2)</i>
1992	4.25%	8.00%	3.75%
1993	3.69%	7.00%	3.31%
1994	5.60%	7.75%	2.15%
1995	6.23%	9.25%	3.02%
1996	5.78%	8.75%	2.97%
1997	6.00%	9.00%	3.00%
1998	5.54%	8.25%	2.71%
1999	5.72%	7.75%	2.03%
2000	6.87%	8.75%	1.88%
2001	3.85%	7.75%	3.90%
2002	2.20%	6.00%	3.80%
2003	1.36%	4.75%	3.39%
2004	2.12%	4.50%	2.38%
2005	4.03%	6.00%	1.97%
2006	5.33%	7.50%	2.17%
2007	5.12%	8.00%	2.88%
2008	3.09%	6.00%	2.91%
2009	1.57%	4.25%	2.68%
2010	0.92%	4.00%	3.08%
2011	0.83%	3.50%	2.67%
2012	1.01%	3.00%	1.99%
2013	0.68%	3.00%	2.32%
2014 ³	0.56%	3.00%	2.44%

1) Source: Federal Reserve Bank of St. Louis.

2) Source: IRS Revenue Ruling 2014-14

3) Libor rates until 9/29/2014, IRS rates until 9/30/2014

Table 2. Prejudgment Interest (PJI) Multipliers From Start Date Through November 30, 2014

								PJI for the Sale of Unregistered Securities		PJI for Unpaid Taxes	
Year	Avg 12 Month LIBOR Rate	Start Date	End Date	Period Rate (Act/360, ¹)	Start Date	End Date	Period Rate (Act/360, ¹)	Start Date	PJI Multiplier	Start Date	PJI Multiplier
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
1992	4.25%	1/1/1992	12/31/1992	4.32%	5/1/1992	12/31/1992	2.89%	1/1/1992	1.2607	5/1/1992	1.2298
1993	3.69%	1/1/1993	12/31/1993	3.74%	5/1/1993	12/31/1993	2.51%	1/1/1993	1.1671	5/1/1993	1.1414
1994	5.60%	1/1/1994	12/31/1994	5.68%	5/1/1994	12/31/1994	3.81%	1/1/1994	1.0890	5/1/1994	1.0520
1995	6.23%	1/1/1995	12/31/1995	6.32%	5/1/1995	12/31/1995	4.24%	1/1/1995	0.9766	5/1/1995	0.9380
1996	5.78%	1/1/1996	12/31/1996	5.88%	5/1/1996	12/31/1996	3.93%	1/1/1996	0.8591	5/1/1996	0.8250
1997	6.00%	1/1/1997	12/31/1997	6.09%	5/1/1997	12/31/1997	4.09%	1/1/1997	0.7559	5/1/1997	0.7228
1998	5.54%	1/1/1998	12/31/1998	5.62%	5/1/1998	12/31/1998	3.77%	1/1/1998	0.6552	5/1/1998	0.6262
1999	5.72%	1/1/1999	12/31/1999	5.80%	5/1/1999	12/31/1999	3.89%	1/1/1999	0.5671	5/1/1999	0.5389
2000	6.87%	1/1/2000	12/31/2000	6.98%	5/1/2000	12/31/2000	4.67%	1/1/2000	0.4812	5/1/2000	0.4493
2001	3.85%	1/1/2001	12/31/2001	3.91%	5/1/2001	12/31/2001	2.62%	1/1/2001	0.3845	5/1/2001	0.3674
2002	2.20%	1/1/2002	12/31/2002	2.23%	5/1/2002	12/31/2002	1.50%	1/1/2002	0.3325	5/1/2002	0.3229
2003	1.36%	1/1/2003	12/31/2003	1.38%	5/1/2003	12/31/2003	0.92%	1/1/2003	0.3034	5/1/2003	0.2976
2004	2.12%	1/1/2004	12/31/2004	2.16%	5/1/2004	12/31/2004	1.44%	1/1/2004	0.2857	5/1/2004	0.2768
2005	4.03%	1/1/2005	12/31/2005	4.09%	5/1/2005	12/31/2005	2.74%	1/1/2005	0.2586	5/1/2005	0.2424
2006	5.33%	1/1/2006	12/31/2006	5.40%	5/1/2006	12/31/2006	3.62%	1/1/2006	0.2092	5/1/2006	0.1888
2007	5.12%	1/1/2007	12/31/2007	5.20%	5/1/2007	12/31/2007	3.49%	1/1/2007	0.1472	5/1/2007	0.1286
2008	3.09%	1/1/2008	12/31/2008	3.14%	5/1/2008	12/31/2008	2.10%	1/1/2008	0.0906	5/1/2008	0.0796
2009	1.57%	1/1/2009	12/31/2009	1.59%	5/1/2009	12/31/2009	1.07%	1/1/2009	0.0574	5/1/2009	0.0519
2010	0.92%	1/1/2010	12/31/2010	0.94%	5/1/2010	12/31/2010	0.63%	1/1/2010	0.0408	5/1/2010	0.0376
2011	0.83%	1/1/2011	12/31/2011	0.84%	5/1/2011	12/31/2011	0.56%	1/1/2011	0.0311	5/1/2011	0.0283
2012	1.01%	1/1/2012	12/31/2012	1.03%	5/1/2012	12/31/2012	0.69%	1/1/2012	0.0225	5/1/2012	0.0191
2013	0.68%	1/1/2013	12/31/2013	0.69%	5/1/2013	12/31/2013	0.46%	1/1/2013	0.0121	5/1/2013	0.0098
2014	0.56%	1/1/2014	11/30/2014	0.52%	5/1/2014	11/30/2014	0.33%	1/1/2014	0.0052	5/1/2014	0.0033

1) US dollar Libor rates are quoted on actual over 360 day count convention. E.g. https://www.theice.com/publicdocs/IBA_LIBOR_FAQ.pdf.

Table 3. Summary of Ill-gotten Gains plus Prejudgment Interest**Unpaid Taxes. Sam Wyly.**

<i>Year</i>	<i>Unpaid Taxes¹</i>	<i>PJI Start Date</i>	<i>PJI Multiplier</i>	<i>PJI</i>	<i>Total</i>
1992	5,966,364.02	5/1/1993	1.14	6,810,250.81	12,776,614.83
1994	5,647,577.56	5/1/1995	0.94	5,297,499.12	10,945,076.68
1995	8,403,862.33	5/1/1996	0.83	6,933,341.23	15,337,203.56
1996	31,704,395.33	5/1/1997	0.72	22,916,419.89	54,620,815.22
1997	4,770,283.04	5/1/1998	0.63	2,987,284.98	7,757,568.02
1998	20,054,112.37	5/1/1999	0.54	10,806,824.71	30,860,937.08
1999	3,558,886.46	5/1/2000	0.45	1,598,880.23	5,157,766.69
2000	30,763,043.37	5/1/2001	0.37	11,303,033.23	42,066,076.60
2001	717,257.63	5/1/2002	0.32	231,617.06	948,874.69
2002	59,189.94	5/1/2003	0.30	17,615.75	76,805.69
2003	130,837.91	5/1/2004	0.28	36,211.96	167,049.87
2004	212,812.81	5/1/2005	0.24	51,575.65	264,388.46
Total	111,988,622.76			68,990,554.63	180,979,177.39

Unpaid Taxes. Charles Wyly.

<i>Year</i>	<i>Unpaid Taxes¹</i>	<i>Start Date</i>	<i>PJI Multiplier</i>	<i>PJI</i>	<i>Total</i>
1992	3,552,822.74	5/1/1993	1.14	4,055,336.53	7,608,159.27
1994	3,399,472.10	5/1/1995	0.94	3,188,747.79	6,588,219.89
1995	3,811,674.47	5/1/1996	0.83	3,144,701.65	6,956,376.12
1996	15,995,862.13	5/1/1997	0.72	11,562,052.81	27,557,914.94
1997	1,847,235.91	5/1/1998	0.63	1,156,790.92	3,004,026.83
1998	7,999,037.99	5/1/1999	0.54	4,310,547.37	12,309,585.36
1999	2,440,873.78	5/1/2000	0.45	1,096,597.17	3,537,470.95
2000	19,030,193.52	5/1/2001	0.37	6,992,120.62	26,022,314.14
2001	490,746.59	5/1/2002	0.32	158,472.05	649,218.64
2003	328,362.75	5/1/2004	0.28	90,880.84	419,243.59
Total	58,896,281.97			35,756,247.75	94,652,529.72

Sale of Unregistered Securities. Sam Wyly.

<i>Year</i>	<i>Total Profit²</i>	<i>25% of Profit</i>	<i>Start Date</i>	<i>PJI Multiplier</i>	<i>PJI</i>	<i>Total</i>
1997	15,518,340	3,879,585	1/1/1998	0.66	2,541,817.72	6,421,402.60
1998	389,343	97,336	1/1/1999	0.57	55,201.26	152,536.98
2000	5,937,820	1,484,455	1/1/2001	0.38	570,837.37	2,055,292.37
2001	25,547,842	6,386,961	1/1/2002	0.33	2,123,455.05	8,510,415.55
Total	47,393,344	11,848,336			5,291,311.41	17,139,647.41

Sale of Unregistered Securities. Charles Wyly.

<i>Year</i>	<i>Total Profit²</i>	<i>25% of Profit</i>	<i>Start Date</i>	<i>PJI Multiplier</i>	<i>PJI</i>	<i>Total</i>
1997	7,045,977	1,761,494	1/1/1998	0.66	1,154,091.77	2,915,585.90
1998	353,393	88,348	1/1/1999	0.57	50,104.27	138,452.52
2001	10,602,438	2,650,609	1/1/2002	0.33	881,240.77	3,531,850.21
Total	18,001,807	4,500,452			2,085,436.81	6,585,888.81

Summary.

	<i>Ill-gotten Gains</i>	<i>PJI</i>	<i>Total</i>
Sam Wyly	123,836,958.76	74,281,866.04	198,118,824.80
Charles Wyly	63,396,733.97	37,841,684.56	101,238,418.53
Total	187,233,692.73	112,123,550.60	299,357,243.33

1) Source: JX-9904A and JX-9904B. Reported total reflects \$0.01 difference due to rounding.

2) Source: Misuraca Supplemental Report June 5, 2014, exhibits 1A-3B.